

Resolution No.: 03-01-11
Introduced: 3/14/2011
Adopted: _____
Effective Date: _____

BOARD OF MANAGERS

For

Chevy Chase Village, MD

SUBJECT: AN ORDINANCE TO CREATE A NEW CHAPTER 16 OF THE CHEVY CHASE VILLAGE CODE TO ESTABLISH THE PROCESS AND CRITERIA FOR THE CLOSURE AND FOR THE ABANDONMENT OF PUBLIC RIGHTS- OF-WAY IN THE VILLAGE.

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality; to protect and preserve the municipality's rights, property and privileges; to preserve peace and good order; to secure persons and property from danger and destruction; and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 77-14 of the Chevy Chase Village Charter authorizes the Board of Managers to pass ordinances as it may deem necessary for the health, safety and welfare of Chevy Chase Village; for the protection and preservation of Chevy Chase Village property, rights and privileges; for the preservation of peace and good order; and for the suppression and abatement of all nuisances; and

WHEREAS, under Maryland law, the Village holds public rights-of-way, within the Village, in trust for the public; and

WHEREAS, after proper notice to the public, the Board of Managers conducted a public hearing at which it considered the following ordinance in public session assembled on the ____ day of _____, 2011; and

WHEREAS, the Village currently does not have a formal process or statutory criteria for considering requests to close or abandon a public right-of-way in the Village; and

WHEREAS, the Board of Managers finds that it would be in the public interest to establish a process and criteria for the closure and the abandonment of a public right-of-way within the Village; and

WHEREAS, the Board of Managers finds that the Village Code should be amended to establish a process and criteria for the closure and for the abandonment of a public right-of-way in the Village; and

WHEREAS, the Board of Managers finds that the ordinance as hereinafter set forth is necessary to assure the good government of the Village; for the protection and preservation of the Village's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, comfort, and convenience of the residents of the Village.

NOW, THEREFORE, the Board of Managers of Chevy Chase Village does hereby adopt the following ordinance:

AN ORDINANCE TO CREATE A NEW CHAPTER 16 OF THE CHEVY CHASE VILLAGE CODE TO ESTABLISH THE PROCESS AND CRITERIA FOR THE CLOSURE AND FOR THE ABANDONMENT OF PUBLIC RIGHTS-OF-WAY IN THE VILLAGE.

SECTION 1. BE IT ORDAINED AND ORDERED, this ____ day of _____, 2011, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code and Section 77-14 of the Village Charter, that a new Chapter 16 of the Village Code is hereby adopted to read as follows:

Chapter 16

CLOSURE AND ABANDONMENT OF RIGHTS-OF-WAY

- § 16-1. Definitions and scope.
- § 16-2. Requests to close or abandon.
- § 16-3. Hearings—Notice.
- § 16-4. Request of comments prior to closure or abandonment.
- § 16-5. Action by Board of Managers
- § 16-6. Withdrawal of request.
- § 16-7. Subdivision requests.

Sec. 16-1. Definitions and scope.

(a) For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) *Abandon*: means to permanently surrender, relinquish or cede a public right of way with the intent of not resuming the Village's and public's rights and interests in the right of way.
- (2) *Close*: means to prevent current and/or future motorized vehicular access.
- (3) *Right-of-way*: means streets, roads, alleys, pedestrian walkways, water mains, sanitary sewers, storm sewers, storm drainage rights-of-way or any other rights-of-way, whether improved or reserved for future use, that are under the jurisdiction of the Village.

(b) Scope of this Chapter.

- (1) This Chapter applies to the closure or abandonment of all rights-of-way. The provisions are the same for rights-of-way that have been used and those that have never been used. This Chapter determines how the Village may exercise its authority.
- (2) Proceedings not covered by this Chapter. This Chapter does not apply to temporary right-of-way closures. Temporary right-of-way closures include, but are not limited to:

- a. temporary closures for the installation, maintenance or repair of facilities, in or near the right-of-way, owned or operated by the Village, public utilities or entities that have a franchise to use the right-of-way;
- b. temporary closures for block parties or similar events;
- c. temporary closures requested by police, fire, rescue and other public safety entities; and
- d. other temporary closures authorized by the Village.

Sec. 16-2. Requests to close or abandon.

(a) Who May Make a Request. If a person has an interest in the closure or abandonment of a right-of-way within the Village, the person may request that the Village consider the closure or abandonment of a right-of-way. The request must be in writing. The Board may also initiate a consideration of whether or not to close or abandon a right-of-way.

(b) Contents of a Request. The request must include:

- (1) A legal description and survey of exactly what the person would like the Village to consider closing or abandoning;
- (2) Certification to the Village that written notice of the request to close or abandon a right-of-way has been given to all those persons owning or living on property that shares a common boundary with the right-of-way in question or is located between the proposed area to be closed or abandoned and the nearest cross streets; and
- (3) An application fee in the amount set forth in Chapter 6..

Sec. 16-3. Hearings—Notice.

(a) Hearing Required. The Village must hold a public hearing within ninety (90) days if the Village:

- (1) Receives a request to consider the closure or abandonment of a right-of-way; or
- (2) Initiates a consideration of whether or not to close or abandon a right-of-way.

(b) Notice of the Hearing. The Village must give notice of the hearing to the public at least fourteen (14) days in advance by:

- (1) Sending a written notice to every person who owns or lives on property that shares a common boundary with the right-of-way in question or is located between the proposed area to be closed or abandoned and the nearest cross streets;

- (2) Publishing a notice in the Crier;
- (3) Posting a notice at the right-of-way.

(c) Effect of Failure to Receive Notice. If a person fails to receive notice of the hearing under this section, the Village's action is still valid unless there are other defects in the proceeding.

Sec. 16-4. Request for comments prior to closure or abandonment.

(a) Request for Comments Required. The Village must ask the following entities to comment at least thirty (30) days before the public hearing.

- (1) Montgomery County Department of Public Works and Transportation;
- (2) The Maryland National Capital Park and Planning Commission;
- (3) The Washington Suburban Sanitary Commission;
- (4) Telecommunications and Cable Companies that provide service in the Village;
- (5) The Potomac Electric Power Company;
- (6) Washington Gas;
- (7) The Washington Metropolitan Area Transit Authority;
- (8) Montgomery County Transportation Department, Transit Services Division;
- (9) The State Highway Administration;
- (10) Montgomery County Fire and Rescue Services Department;
- (11) Any other person or entity who owns or operates property or a public franchise or license if:
 - a. The property is located in the right-of-way; or
 - b. The operation of the public franchise or license involves regularly scheduled use of the right-of-way.
- (12) If any of the foregoing entities are re-named or reorganized, notice shall be given to the successor to the entity.

(b) Failure to Receive Comments. If an entity does not respond to the Village's request for comments within thirty (30) days, the Village may assume that the entity has no comments.

Sec. 16-5. Action by the Board of Managers.

(a) The Board may close or abandon a right-of-way only if it finds:

(1) The right-of-way is not necessary for current or anticipated public use in the foreseeable future, or for motorized vehicular use in the case of a closing;

(2) The proposed closure or abandonment would not be detrimental to the health, safety and welfare of the residents of the Village in view of any or all of the following considerations:

- a. Current public use;
- b. Safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood, both as to local and through traffic;
- c. Changes in fact and circumstances since the original dedication of the right-of-way to be closed or abandoned;
- d. The right-of-way does not provide the only means of access to a property;
- e. Use of the right of way for purposes appurtenant to right of way uses including, but not limited to, drainage culverts and pipes and public utility use; and
- f. Potential future public use.

(b) If the Board concludes that a right-of-way should be abandoned, the Board shall adopt a resolution of abandonment which shall be recorded among the Land Records for Montgomery County, Maryland.

Sec. 16-6. Withdrawal of request.

A person may withdraw a request to consider closure or abandonment of a right-of-way at any time before the Board takes action.

Sec. 16-7. Subdivision requests.

A person who has requested and is granted a right-of-way abandonment by the Village is responsible for initiating and paying any applicable fees for a resubdivision of the abandoned property with the appropriate County authorities and the Maryland-National Capital Park and Planning

Commission, if necessary, as well as all fees and costs associated with required surveys and plats, in order to complete the abandonment process.

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, 2011, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code and Section 77-14(a) of the Village Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ____ day of _____, 2011, provided the same is posted at the Village Office for fourteen (14) days prior thereto.

CHEVY CHASE VILLAGE

David L. Winstead, Chairman
Board of Managers
Chevy Chase Village

ATTEST:

Peter M. Yeo, Secretary

